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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/655,091

09/05/2000

Johann Meseth

GR 98 P 3112

8366

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09/06/2005

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EXAMINER

AWAI, ALEXANDRA F

ART UNIT

PAPER NUMBER

3663

DATE MAILED: 09/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/655,091

Applicant(s)

MESETH, JOHANN

Examiner

Alexandra Awai

Art Unit

3663

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 and 7-14 is/are pending in the application.
- 4a) Of the above claim(s) 9-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7 and 8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Claims 1-14 remain in the application. Claims 1, 2, 7, and 8 have been amended. Claims 5 and 6 have been cancelled. Claims 9-14 have been withdrawn. Claims 1-4, 7 and 8 have been examined.

#### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-8 have been considered but are moot in view of the new grounds of rejection. The amendments to claims 7 and 8 are not substantive with regard to patentability, but rather are cosmetic rephrasings of the previously submitted text. The amendments to claims 1 and 2, which are the only amendments the applicant provided arguments for in the 5/31/2005 correspondence, are addressed in the claim rejection to follow.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. The term "close" in claims 1 and 2 is a relative term which renders the claim indefinite. The term "close" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The specification instead discloses that the end of the drain pipe is above the opening of the condenser. Given that the single drawing provided is

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simplified and diagrammatic, there is no way to ascertain the three-dimensional relationship between the drain pipe and the condenser.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gaouditz *et al* (4,022,655) as applied to claims 1-8 in the 6/17/04 Examiner's Answer to Appeal Brief, and further in view of Billig *et al* (5,282,230).

3. As discussed in section 2 of this Office action, every limitation of applicant claims 1-8 except for those introduced by the amendments to claims 1 and 2 was addressed by the primary reference as set forth in previous correspondence. However, Gaouditz *et al* does not teach a so-called building condenser in a close local relationship to the upper end of a drain pipe. Billig *et al* discloses a condenser (Fig. 1, 54a) constructed at a higher elevation than the reactor pressure vessel (Fig. 1, 16) that relies upon air circulation to carry gaseous fluids into a reservoir, as does applicant's building condenser. It would have been *prima facie* obvious to one skilled in the art to modify the containment disclosed by Gaouditz *et al* by placing the Billig *et al* condenser nearby and slightly below the duct opening (16) of that primary reference. The motivation for this modification would have been to siphon noncondensable gases (particularly hydrogen) from the area around the condenser within the containment.

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The only structural difference between the Gaouditz *et al* duct and the applicant's pipe is that the former is not straight – note that the shape of the drain pipe was never explicitly claimed in the current application or the prior art. Had the shape of the pipe been claimed, such a limitation would not confer patentability upon the applicant's invention, as changes in shape that a person skilled in the art would have found obvious absent persuasive evidence that the particular configuration was significant are considered a matter of choice (*In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966)). Furthermore, the Gaouditz *et al* duct, which fluidly connects the top of the pressure chamber and the condensing chamber (see Fig. 1), is the structural equivalent of the applicant's drain pipe. That is, given the obvious modification described above, it would perform the function specified in claims 1 and 2 in substantially the same manner with substantially similar results. Therefore, the applicant's invention is not patentably distinct from the prior art (MPEP § 2144.04 (IV)).

### ***Conclusion***

4. The prior art made of record in previous correspondence and not relied upon is considered pertinent to applicant's disclosure.
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexandra Awai whose telephone number is (517) 272-3079. The examiner can normally be reached on 8:30-5:00 Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on (571) 272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AA  
August 31, 2005

  
JACK KEITH  
PRIMARY EXAMINER  
SPE 3663